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AUG 29 2001

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Re: Application of: Donald Kyle, et al.  
Serial No.: 09/730,814  
Examiner: Samuel A. Barts  
Art Unit: 1621  
Filed: December 6, 2000  
For: **TERTIARY AMINO COMPOUNDS HAVING  
OPIOID RECEPTOR AFFINITY**

#6  
8/31/01  
Amelau

Assistant Commissioner for Patents  
Washington, D.C. 20231

August 22, 2001

**RESPONSE TO RESTRICTION REQUIREMENT**

Sir:

In response to the Restriction and Election of Species Requirements mailed on July 17, 2001, Applicant makes the following response:

In response to the Restriction Requirement, Applicant elects group 1, including claims 1 - 7 directed to compounds classified in class 564, subclass 305 +. This election is made without traverse.

The Examiner further stated that "[c]laims 1-10 are generic to a plurality of disclosed patentably distinct species..." and that "[a]pplicant is required to elect a single disclosed species..."

In response, Applicant **provisionally** elects the following species **with traverse**:

1-[1-benzyl-1-(2-phenyl-1-oxo-ethyl)-amino]-2-dibutylamino-ethyl

This election is made with traverse. In support of this position, the Examiner is directed to the Manual of Patent Examining Procedure, Seventh Edition, §803, a copy of which is attached, which states the following:

*If the search and examination of an entire application  
can be made without serious burden, the examiner must examine  
it on the merits, even though it includes claims to independent  
or distinct inventions.*

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The Examiner is directed to claim 6 of the present invention which recites only three patentably distinct species. As the search and examination of these three species can be made without serious burden, the Examiner is respectfully requested to consider all of the subject matter of the claims of Group I and not withdraw from consideration the non-elected species.

It is noted that this traverse is based entirely on the position that the search and examination of the small number of species (3) in the application is not unduly burdensome. This traverse should not be construed as an admission that the species are not patentably distinct.

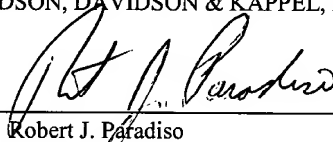
The period for reply has not been specified in the Office Action Summary. Accordingly, the period for reply is believed to be (6) six months from the mailing date of the restriction requirement. In the event that an extension fee is due, the deficiency should be charged to deposit account number 50-0552.

An early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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By



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